

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	NO. 2000-KA-0884
VERSUS	*	COURT OF APPEAL
KURT J. MASSEY	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
	*	
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 375-362, SECTION "G"
Honorable Julian A. Parker, Judge

Judge Dennis R. Bagneris, Sr.

(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., and Judge David S. Gorbaty)

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AFFIRMED

STATEMENT OF CASE

On March 28, 1995, the defendant, Kurt Massey (“the defendant”), was charged by bill of information with purse snatching in violation of La. R.S. 14:65.1. The defendant entered a plea of not guilty at his arraignment on March 31, 1995. After a jury trial on July 25, 1996, the defendant was found guilty as charged. On November 13, 1998, the trial court sentenced the defendant to serve twenty years at hard labor. The trial court denied the defendant’s motion to reconsider sentence. The State filed a multiple bill of information alleging the defendant to be a third felony offender. A multiple bill hearing was held on November 20, 1998. On July 9, 1999, the State withdrew the multiple bill of information. The trial court vacated the original sentence imposed and resentenced the defendant to serve eleven years at hard labor. The trial court denied the defendant’s motion to reconsider sentence. The defendant’s motion for appeal was granted, and a return date of September 9, 1999, was set.

FACTS

On February 22, 1995, Dale Stopp (“Mr. Stopp,” “the victim”), his wife and another couple were in New Orleans on vacation. They learned from a buggy driver that it was the first day of Mardi Gras. The buggy driver gave them directions to the Saturn parade in New Orleans. The Stopps and the other couple arrived at the intersection of Canal Street and St. Charles Avenue at approximately six o’clock in the evening. The parade did not pass until eight o’clock in the evening. While the Stopps were waiting for the parade, the defendant initiated a conversation with Mr. Stopp. Mr. Stopp told the defendant it was his first trip to New Orleans. About twenty minutes later, Mr. Stopp walked to a restaurant to use the restroom. Mr. Stopp noticed that the defendant followed him to the restaurant and was waiting outside the restaurant when Mr. Stopp returned from using the restroom. Mr. Stopp walked back to where his wife and the other couple were standing. They met several men from New York. At that time, Mr. Stopp moved his wallet from his rear pants pocket to his front right pants pocket. During the parade, one of the floats stopped in front of him. The krewe members were throwing beads and other trinkets. Mr. Stopp was pushed from behind into the barricade. At that time, he noticed a man, later identified as Sidney Marts, kneeling at his feet. Marts was looking up at Mr. Stopp and smiling. Marts did not have any beads or trinkets in his hands.

Mr. Stopp stated that he almost fell over the barricade. After he stood up, Mr. Stopp noticed that his wallet was missing. About five minutes later, a plainclothes police officer approached him and showed him a wallet. Mr. Stopp identified the wallet as belonging to him.

Detective Thelonius Dukes and his partner, Detective Tyrone Martin, were working parade patrol on February 22, 1995. They were in plainclothes. Their assignment was to deter pickpocketing and other crimes behind the parade line. Detective Dukes testified that he observed the defendant engaged in a conversation with a man, later identified as Sidney Marts, and a woman. The officer saw the defendant push Mr. Stopp against the barricade. Marts then leaned down and took Mr. Stopp's wallet from his pants pocket. The defendant took the wallet from Marts, and the defendant, Marts and the woman walked away. When the police officers approached the defendant and Marts, the defendant threw the wallet to the ground and said "That's not mine. That's his," while pointing at Marts. Detective Dukes retrieved the wallet and eventually returned the wallet to Mr. Stopp.

Detective Tyrone Martin also testified that he observed the defendant, Marts and a woman prior to the purse snatching. They were engaged in a conversation among themselves. Detective Martin stated that he saw the defendant and the woman push Mr. Stopp against the barricade. Marts then

knelt down and took Mr. Stopp's wallet from his pocket. The defendant reached for the wallet and took the wallet from Marts. The three people then walked away from the crowd. The defendant threw the wallet on the ground when the police officers approached him. Detective Dukes retrieved the wallet from the ground.

Carl Marcel testified that he was with the defendant on February 22, 1995. Marcel stated that the defendant picked him up to go to the parade. They walked from Josephine Street to St. Charles Avenue and then to Jackson Avenue. They stopped at Jackson Avenue to talk to some friends and neighbors. They then walked towards Canal Street. When they reached Poydras Street, they stopped to purchase a soft drink. While they were standing on Canal Street, he saw a black male hand the defendant something. The black male told Marcel to get away. Shortly thereafter, he saw people running. He noticed three or four police officers in the area. The officers handcuffed four men and one woman and had the subjects standing against a wall. Marcel told one of the officers that he and the defendant were together. The police officer told him to get away. Marcel stated that the defendant did not approach the barricade or speak with the victim. The witness acknowledged a prior conviction for possession of cocaine.

ERRORS PATENT AND ASSIGNMENT OF ERROR NUMBER 8

A review of the record for errors patent reveals none.

LAW AND DISCUSSION

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, the defendant contends that his right to a fair trial was denied when prior arrest information regarding his co-defendant was introduced at trial. Specifically, the defendant complains of Mr. Stopp's testimony that he saw Sidney Marts kneeling at his feet when he was pushed against the barricade. The defendant also argues that Detective Martin's testimony that he knew Marts from prior arrests was prejudicial. A review of the trial transcript reveals that the defendant did not object to this testimony. Therefore, any alleged error has not been preserved for review on appeal. La. C.Cr.P. article 841.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 2

The defendant also suggests that he was denied his right to a fair trial when the prosecutor appealed to the jury's sympathy, passion and prejudice by strongly emphasizing the victim's handicap. The defendant claims that

he was prejudiced when the State acknowledged in its opening statement that the victim was a double amputee and later, when the victim testified that he had to rest his back. However, the defendant did not object to these alleged errors. Therefore, these issues have not been preserved for review on appeal. La. C.Cr.P. article 841.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 3

In his third assignment, the defendant argues that he was subjected to an unreasonably long delay in sentencing, which violated his constitutional right to a fair and speedy trial. The defendant was arraigned on March 31, 1995, and went to trial on July 5, 1996. He was initially sentenced to twenty years at hard labor on November 13, 1998. On that date, the state filed a multiple bill of information. A multiple bill hearing was conducted on November 20, 1998. Thereafter, on July 9, 1999, the state withdrew the multiple bill. The trial court vacated the sentence previously imposed and resentenced defendant to eleven years at hard labor.

A defendant has the right under the Sixth Amendment and Article 1, Section 16 of the Louisiana Constitution to a speedy trial. This constitutional right attaches when an individual becomes an accused either

by formal indictment or by arrest and actual restraint. United States v. Marion, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971); State v. Sweeney, 443 So.2d 522 (La. 1983). In Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the Supreme Court set out the following four factors to determine whether a defendant's right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) the prejudice to the defendant as a result of the delay. The Court stated that the length of the delay was the triggering mechanism, and until the delay was presumptively prejudicial, there was no need to inquire into the other factors. The Court further stated that the length of the delay that would provoke such an inquiry was dependent upon the peculiar circumstances of the case. The Court noted that the reason for the delay was closely related to the length of the delay and that different weights would be given to different reasons. As to the defendant's assertion of his right to a speedy trial, the Court stated that the assertion of the right was entitled to strong evidentiary weight in determining whether the defendant was deprived of his right. Regarding the final factor, the Court stated that prejudice was to be assessed in light of the interests of the defendant, which the speedy trial right was designed to protect. The Court identified those interests as preventing oppressive

pretrial incarceration, minimizing the anxiety and concern of the defendant, and limiting the possibility that the defense would be impaired.

However, the right to a speedy trial does not encompass sentencing. State v. Johnson, 363 So.2d 458, 461 (La. 1978). The appropriate statute, La. C.Cr.P. article 874, provides that “sentence shall be imposed without unreasonable delay.” The Louisiana Supreme Court considered this issue and stated:

Principles of fundamental fairness dictated by the due process clause of the Fourteenth Amendment prohibit inordinate delays in post-conviction proceedings such as imposition of sentence . . . when the delays cause prejudice to the defendant.

. . . . In determining whether the delay was unreasonable or prejudicial, the court should adopt a flexible approach in which all of the circumstances are evaluated.

State v. Duncan, 396 So.2d 297, 299 (La. 1981).

In Johnson, seven years occurred between the defendant’s conviction and sentence. The Court stated that under La. C.Cr.P. art. 874, the defendant was “entitled to imposition of sentence `without unreasonable delay’.” The Court declined to determine the reasonableness of the delay, but declared “we hold that the defendant is not entitled to have his conviction and sentence set aside, since he sustained no prejudice by the delay in its imposition.”

In State v. Dorsey, 95-1084 (La. App. 3 Cir. 3/20/96), 672 So.2d 188,

a defendant pled guilty to issuing worthless checks in 1991 and was sentenced in 1995 to serve six years at hard labor. On appeal, he argued that the delay in sentencing was unreasonable and illegal. During the four-year interval between conviction and sentencing, the defendant had been first released on bond to make restitution and then twice incarcerated on unrelated matters. On appeal, the Third Circuit affirmed the defendant's sentence on the basis that some of the delays were caused by the defendant and also because no prejudice to the defendant could be shown by the delay.

In the present case, the defendant was found guilty after a jury trial on July 25, 1996. The record reflects that between July 25, 1996, and November 13, 1998, the defendant sought and obtained seven continuances, three of which were joint continuances. The defendant obtained a continuance on his own motion on September 21, 1998. On November 13, 1998, the trial court sentenced the defendant to twenty years at hard labor. At that time, the State informed the trial court and the defendant that it was filing a multiple bill of information alleging the defendant to be a third felony offender. A multiple offender hearing was held on November 20, 1998. The trial court did not adjudicate the defendant at that time, as the defendant sought to obtain transcripts of the prior guilty pleas. Between November of 1998 and July of 1999, the defendant sought and obtained five

continuances. On several of these occasions, defense counsel failed to appear for the hearing. The last continuance granted to the defendant was on June 1, 1999, when counsel failed to appear. Therefore, defendant's own actions in seeking continuances and counsel's failure to appear contributed to the delay in sentencing.

Further, the possible range of sentences the defendant faced was between two and twenty years at hard labor. La. R.S. 14:65.1. If adjudicated a multiple offender, the minimum sentence which the trial court could impose was ten years at hard labor. La. R.S. 15:529.1. Thus, the defendant was not likely to be released from incarceration in less than three years from the date of his conviction. As such, the defendant was not prejudiced by the delay in his sentencing.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 4

The defendant further argues that the sentence of eleven years at hard labor is unconstitutionally excessive.

Article 1, Section 20 of the Louisiana Constitution of 1974 provides that "No law shall subject any person . . . to cruel, excessive or unusual punishment."

A sentence within the statutory limit is constitutionally excessive if it is "grossly out of proportion to the severity of the crime" or is "nothing more than the purposeless imposition of pain and suffering. State v. Caston, 477 So.2d 868 (La. App. 4th Cir. 1985). Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La. C.Cr.P. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. State v. Soco, 441 So.2d 719 (La. 1983); State v. Quebedeaux, 424 So.2d 1009 (La. 1982).

If adequate compliance with Article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. State v. Quebedeaux, *supra*; State v. Guajardo, 428 So.2d 468 (La. 1983).

In the case at bar, the defendant was initially sentenced to twenty years at hard labor. When the trial court learned that the state was not going to pursue the multiple bill of information, the trial court vacated the original sentence and resentenced the defendant to serve eleven years at hard labor. Although the defendant was not adjudicated a multiple offender, the trial court took into consideration the defendant's prior convictions when it

resentenced the defendant. The trial court noted that the defendant had prior convictions for possession of stolen property in 1981 and possession of a firearm by a convicted felon in 1992. In light of the defendant's prior criminal history, we find that it cannot be said that the trial court erred when it sentenced the defendant to a mid-range sentence of eleven years at hard labor.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 5

In this assignment, the defendant contends that he was denied his right to a fair trial when the challenge for cause against a recently robbed voir dire panel member was denied. A review of the trial record does not support the defendant's argument. The record contains a transcript of the voir dire. There is nothing in the record to suggest that the defendant made a challenge for cause against a potential juror.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 6

The defendant further argues that he was denied a fair trial when the State introduced inadmissible testimony regarding the practice and methodology of purse-snatchers. This testimony was allegedly admitted

during the cross-examination of Detective Martin. As defendant himself elicited the information from Detective Martin, he cannot now complain of the admission of the testimony.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 7

The defendant also suggests that the evidence presented by the State was insufficient to support a conviction for purse snatching.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jacobs, 504 So.2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Shapiro, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. La. R.S. 15:438 is

not a separate test from Jackson v. Virginia, but rather, is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. State v. Wright, 445 So.2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Jacobs, supra.

“Purse snatching” is “the theft of anything of value contained within a purse or wallet at the time of the theft, from the person of another or which is in the immediate control of another, by use of force, intimidation, or by snatching, but not armed with a dangerous weapon.” La. R.S. 14:65.1. This Court has held that “snatching” does not require an actual face to face confrontation. See State v. Capote, 474 So.2d 497 (La. App. 4th Cir. 1985); State v. Neville, 96-0137 (La. App. 4 Cir. 5/21/97), 695 So.2d 534. The Louisiana Supreme Court in State v. Anderson, 418 So.2d 551 (La. 1982), stated that the “snatching” element was distinguished from “use of force” and “intimidation” by the statute’s wording. Thus, a purse snatching is a theft that occurs “by use of force, intimidation or snatching.” The State needs only to show that use of force, intimidation or snatching was used in the commission of the offense. In Capote, this Court found that even though the victim of a purse snatching did not feel her purse being removed from the back of her chair, its taking from the area of her control constituted a

purse snatching. The defendant in Neville complained that there was no evidence that he took the victim's wallet out of her purse. While the victim did not see the defendant take her wallet from her purse, she saw him walking off with her wallet. This Court found the evidence was sufficient to support the defendant's conviction for purse snatching.

The law of principals, contained in La. R.S. 14:24, provides that:

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals.

Only persons who knowingly participate in the planning or execution of a crime are principals; mere presence at the scene is not enough. State v. Graves, 96-1537, p. 7 (La. App. 4 Cir. 9/10/97), 699 So.2d 903, 906, citing State v. Pierre, 93-0893 (La. 2/3/94), 631 So.2d 427, 428.

In the case at bar, Detectives Dukes and Martin testified that they observed the defendant push the victim against the barricade, enabling Sidney Marts to reach into the victim's pants pocket and remove his wallet. The victim testified that he saw Marts kneeling at his feet when he was pushed from behind. The police officers further stated that they saw the defendant take the wallet from Marts after Marts retrieved the wallet from the victim's pants pocket. The defendant, Marts and a female then walked

away from the crowd. The officers stated that the defendant was in possession of the victim's wallet when they approached the defendant and Marts. The defendant then threw the wallet down and said that the wallet belonged to Marts. The officers returned the wallet to the victim who identified it as his wallet.

We find that such testimony was clearly sufficient to prove that the defendant was a principal in the crime of purse snatching.

This assignment is without merit.

ASSIGNMENT OF ERROR NUMBER 9

In his last assignment of error, the defendant argues that if the errors, individually, did not require reversal of his conviction, then the errors, cumulatively, required a reversal of his conviction. However, as none of the errors assigned above had merit, this assignment is also without merit.

CONCLUSION

Considering the foregoing, the defendant's sentence and conviction are hereby affirmed.

AFFIRMED